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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/837,094
Filing Date: April 18, 2001
Appellant(s): SHEPPARD, JAMES M.

Gregory N. Clements
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 31, 2008 appealing from the Office action mailed November 01, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

Art Unit: 1794

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/7474,529

10/314,794.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 21, 22, and 24 - 27.

No claims have been withdrawn, objected to, or allowed.

Claims 1 - 20 and 23 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,925,459	PARKER et al.	9-1933
2,163,769	TERRASSE	6-1939

Art Unit: 1794

3,669,818	STARK	3,669,818
3,721,273	SHERRILL et al.	3-1973

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

I. Claims 21, 22, and 24 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark in view of Parker et al. and Sherrill et al.

Stark discloses a pile fabric having a patterned surface and a design superimposed on the patterned surface for use in carpets, towels, and upholstery (abstract). Further, Stark discloses that there is a continuing desire in the textile field to produce new and aesthetically pleasing textile products (column 1, lines 25 – 29). Various patterns may be produced in the textile fabric itself by varying the construction of the pile surface and using different color yarns to create various parts or sections of the fabrics (column 1, lines 29 – 31 and 40 – 45). Further, Stark discloses that it is known in the art to print patterned pile fabrics in registry with sections of the existing pattern (column 1, lines 45 – 47). The pile fabric can be produced by conventional means, including weaving, to produce a desired pattern in the fabric (column 2, lines 13 – 15). The printing can be applied by various methods including roller printing, screen printing, photographic printing or the like (column 2, lines 22 – 25). And the printed design can include multiple colors onto fabrics made from different colored yarns (column 2, lines 23 – 28). Additionally, the pile yarns can be looped yarns or cut yarns (column 2, lines 29 – 30). Finally, Stark discloses that the particular pile pattern used to make the fabric is virtually unlimited, as is the print design to be applied to the fabric, and the final product is governed by the desired visual appearance (column 2, lines 43 – 47).

While Stark discloses fabrics made with different color yarns, Stark fails to teach patterned pile fabrics having a woven two-color design on a first side and the reverse design on the opposite side. Parker et al. is drawn to pile fabrics comprising a woven pattern produced by using contrasting yarns

Art Unit: 1794

(lines 1 – 5). Stark discloses that the patterned fabric is made up of two different color pile yarns using a first color yarn to form the background of the design and a second color to form the image of the design on the first side of the fabric, while the second side of the fabric is the reverse with the first color forming the image and the second color forming the background (lines 15 – 25). The different colored yarns can be used to form stripes or other designs (lines 13 – 15). Also, the filling yarns can be different colors creating cross borders, or transverse stripes, in the fabric, with the opposite side being a reverse image (lines 28 – 35). Thus, it would have been obvious to one having ordinary skill in the art to use a pile fabric having a first image on the first side and a reverse image on the second side, as disclosed by Parker et al. as the patterned pile fabric in the printed pile fabric disclosed by Stark since Parker et al. discloses a woven patterned pile fabric and Stark discloses that a printed design can be combined with a patterned pile fabric of any construction to produce a visually appealing finished product. Hence, the different colored sections in the fabric taught by Parker et al. can be enriched by applying a printed pattern to the fabric which enhances the desirability of the end product (column 2, lines 48 – 50).

Additionally, Stark discloses that the pile yarns can be cut yarns. Sherrill et al. discloses that a cut pile surface, where the tufts inherently blossom because they are free to spread out and open (column 3, lines 63 – 65), produces a surface which is more receptive to printing and produces a clearer image than a loop pile surface (column 4, lines 18 – 24). Thus, it would have been obvious to one having ordinary skill in the art to apply the print pattern to a sheared and open cut pile surface, as discussed by Sherrill et al., in the patterned fabric disclosed by Stark because the printed image will have better resolution and result in a clearer image than a printed pattern on a loop pile surface.

Stark fails to disclose the height of the sheared pile yarn in relation to the height of the pile on the opposite side. However, shearing the surface of a fabric creates waste by removing the top surface of the pile. Thus, the more the pile is sheared the more fiber which is wasted. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed

Art Unit: 1794

pile height, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would want to produce a pile height with the least amount of waste, which is expensive, as well as produce a luxurious, thick pile that is appealing to consumers.

And finally, the Applicant recites that the towel retains its preprinted absorbency. Although Stark fail to discuss the preprinted absorbency of the printed fabric, it is reasonable to presume that said limitations would be met by the combination of the two references. Support for said presumption is found in the use of similar materials (i.e. terry cloth towel) and in the similar production steps (i.e. shearing one side of the terry cloth, applying a printed design to the towel surface) used to produce the printed towel. The burden is upon the Applicant to prove otherwise.

The applicant is claiming a woven fabric comprising a first and a second colored yarn regions. The fabric is woven such that the wherever the first colored yarn appears on the front side of the fabric, the second color appears on the back side of the fabric, and wherever the second color appears on the front side of the fabric, the first color appears on the backside, producing a patterned fabric with an inversely colored backside. This type of woven structure, a two colored patterned fabric wherein the different colors are woven to create an inverse pattern, is given patentable weight and is expressly taught by Parker et al. While Parker et al. teaches patterns which include stripes and cross borders, Parker et al. does not explicitly teach that the fabric produces a pattern with a central region and a border. However, it has been held that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). Further, it has been held that where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. [T]he critical question is whether there exists any new and unobvious functional relationship

Art Unit: 1794

between the printed matter and the substrate. *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983). Thus, the limitations with regards to the locations of the different colored regions and printed matter, i.e., the border and central area, relate purely to ornamentation and do not effect the function of the fabric itself. Therefore, the limitations that the first colored regions form a border and the second colored regions form a central area are not given patentable weight since they relate to the appearance and ornamentation of the fabric and do not provide a mechanical function. As shown above, the weave design is taught by Parker et al.

Additionally, the claims recite that the border is capable of masking the graphic impression that may overlap in the border area. However, the claimed product does not positively require that the graphic impression overlaps with the border. Thus, the prior art only needs to be able to mask a printing color. Additionally, the limitation reciting that the central area on the back of the woven fabric is capable of masking any potential bleed through only requires that the contrasting color regions would be able to mask the print. The contrasting color regions adjacent and on the opposite side of the fabric would inherently be capable of masking printing which is a similar color.

Alternatively, since Stark and Parker et al. both suggest that various known weave pattern and print patterns can be used to produce a finished printed fabric, it would have been obvious to one having ordinary skill in the art to choose woven pattern with border regions and an open central area for designs to provide a large central area to place the printed pattern and create an aesthetically pleasing appearance in the finished fabric.

Further, it is noted that the applicant's limitations that the fabric is produced on a dobby loom is an apparatus limitation which is not given patentable weight in the product claim. The patentability of the product is based on the structural limitations of that product and not how it is made or what machine is used to make it. Thus, if the claimed product can be made on a different apparatus or by a different

Art Unit: 1794

process, the claim is unpatentable even though the prior product was made by a different process or apparatus.

Therefore, the claimed features which deserve patentable weight are, the woven towel having two different color yarns which create a first pattern on the a first side having a sheared surface which is 75% to 95% of the height of the pile on the opposite side and an inverse pattern on the reverse side, with a graphic impression printed on one side. And as set forth above, these features are taught by the combination of Stark, Parker et al., and Sherrill et al. And with respect to choosing different towel designs and combining printed designs with woven designs, Stark discloses combining weave designs with printed designs to create various towel products and further teaches it is known to apply the printed design in registry with the pattern of the towel. Additionally, Parker et al discloses that different color yarns can be used to produce different color sections in the towel with a reverse image on the opposite side of the towel. Further, the prior art references also disclose that the patterns which can be used to produce the towel design are virtually unlimited. Thus, the prior art teaches applying print to multi-color patterned towels based on the woven pattern of the towel and that patterned towels with a first image on one side and a reverse image on the opposite side are known. Thus, claims 21, 22, 24 – 27 are rejected.

In the event that the specific design and printed image are given patentable weight Sherrill et al. is included in the rejection as evidence that the design claimed by applicant, a border region surrounding a center area with a design or graphic, is known to those in the art. Sherrill et al. is drawn to printed terry cloth towel products. As shown in Figure 1, the towel is produced with the border design on all four edges and a image in the central area created by the border. Thus, Sherrill et al. discloses that the design pattern desired by the applicant, i.e., a border design on all four edges of the towel and image in the center portion of the towel, is known to those in the art.

Therefore, it would have been obvious to one of ordinary skill in the art to create towels with a known design structure, as shown in Sherrill et al., by combining woven patterns with printed patterns as

Art Unit: 1794

taught in Stark and Parker et al., which teaches creating towels with different colored sections combined with printed patterns to produce a desired finished product. Also, this would create a towel that is visually and texturally appealing due to the printed images, colors, and weave structure.

II. Claims 21, 22, and 24 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. and Stark, Terrasse, and Sherrill et al.

The features of Parker et al. and Stark have been set forth above. Parker teaches a woven patterned fabric which includes two different colored yarns which are woven to form a patterned design on the first side and an inversely colored design on the opposite side. Further, Parker et al. teaches that the pattern can be woven to have contrasting color borders. Parker et al. fails to teach adding a printed design to the patterned, pile fabric. As set forth above, Stark discloses that it is known in the art to add printed designs, in or out of registry with the woven pattern, to pile fabric to produce finished products which are aesthetically attractive to the consumer. Hence, it would have been obvious to one having ordinary skill in the art to add a printed design as disclosed by Stark to the patterned fabric taught by Parker et al. because fabric taught by Parker et al. can be enriched by applying a printed pattern to the fabric which enhances the desirability of the end product (Stark, column 2, lines 48 – 50).

While Stark and Parker do not teach specific design patterns, i.e., the specific features of a towel having borders at each edge and a central area where the printing is applied, both Stark and Parker acknowledge that various woven and printed designs are known and can be combined together to form any desired visual appearance. Terrasse discloses a woven fabric of a reversible pattern of large surface composed of two different colors (column 1, lines 1 – 5). As shown in Figures 1 and 2, the woven fabric has a first face A with a light colored central portion and dark colored, striped border regions on all four edges of the towel and a second face B which has the reversed pattern with a dark colored central regions and a light colored, striped border regions. Terrasse discloses that the light colored yarn is white and the dark color yarn is blue (column 2, lines 45 – 55). Further, Terrasse discloses that the border regions or

Art Unit: 1794

bands of color can be made any desired length and width so that all types of borders may be formed by using two different colored yarns to produce various combinations (column 4, lines 1 – 13). Thus, it would have been obvious to one having ordinary skill in the art to use the known weave design of Terrasse as the weave pattern in the woven pattern in the fabric taught by Parker et al. since Parker et al. discloses that the woven fabric can comprise two contrasting colored yarns and include border regions (column 1, lines 9 – 30) and it is known to use other known designs to make various visually appealing fabrics.

Further, while Parker et al. discloses that the fabric is a pile fabrics, Parker et al., fails to teach shearing and blossoming the pile fabric. Sherrill et al. is drawn to printed pile fabrics. Sherrill et al. discloses that a cut pile surface, where the tufts inherently blossom because they are free to spread out and open (column 3, lines 63 – 65), produces a surface which is more receptive to printing and produces a clearer image than a loop pile surface (column 4, lines 18 – 24). Thus, it would have been obvious to one having ordinary skill in the art to apply the print pattern to a sheared and open cut pile surface, as discussed by Sherrill et al., to produce a smooth fabric surface and give the printed image a better surface to apply the printing on.

Parker et al. and Sherrill et al. fail to disclose the height of the sheared pile yarn in relation to the height of the pile on the opposite side. However, shearing the surface of a fabric creates waste by removing the top surface of the pile. Thus, the more the pile is sheared the more fiber which is wasted. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed pile height, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would want to produce a pile height with the least amount of waste, which is expensive, as well as produce a luxurious, thick pile that is appealing to consumers.

Further, it is noted that the applicant's limitations that the fabric is produced on a dobby loom is an apparatus limitation which is not given patentable weight in the product claim. The patentability of the product is based on the structural limitations of that product and not how it is made or what machine is used to make it. Thus, if the claimed product can be made on a different apparatus or by a different process, the claim is unpatentable even though the prior product was made by a different process or apparatus.

Additionally, the claims recite that the border is capable of masking the graphic impression that may overlap in the border area. However, the claimed product does not positively require that the graphic impression overlaps with the border. Thus, the prior art only needs to be able to mask a printing color. Additionally, the limitation reciting that the central area on the back of the woven fabric is capable of masking any potential bleed through only requires that the contrasting color regions would be able to mask the print. The contrasting color regions adjacent and on the opposite side of the fabric would inherently be capable of masking printing which is a similar color. A striped towel will have darker regions adjacent to lighter regions and a darker colored region on the opposite side as the lighter region, which when printed on will have regions that would mask the printing and bleed through. Thus, claims 21, 22, and 24 – 27 are rejected.

III. Claims 21, 22, and 24 – 27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 – 36 of copending Application No. 09/747,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because the jacquard loom recited in 09/747,529 and the dobby loom recited in this application can be used to produce the same simple fabric construction.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

Art Unit: 1794

I. It is noted that the applicant concedes that the claimed weave structure comprising a weave design with a lighter colored central area and darker colored border region on a first side, with the opposite side having a darker colored central area and a lighter colored border region are known (Appeal Brief, page 5). Thus, the applicant is only arguing two issues 1) does the prior art teach the functional features recited in the limitation "wherein said border on said is capable of masking said graphic impression that may overlap onto said border from said central area on said one side, eliminating the need for precise alignment of said graphic impression within said central area of said one side; and wherein said central area on said second side is capable of masking any potential bleed through of said graphic impression from said central area and 2) would it have been obvious to shear the one side of Terrasse towel to a height of 75 to 95% of the height of the other side and bloom the one side such that a graphic impression can be intensely applied thereto.

I. The applicant argues that the claims are not given proper weight with regard to the functional requirements imposed on the structure (Appeal Brief, page 5). As detailed above, the claims which include process limitations, have been given their broadest reasonable interpretation with regard to the final product produced by the claim limitations. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). In the present case, the final product as claimed by the applicant is a two-tone woven fabric with the claimed border and central area and a graphic design printed onto the lighter color central area. The functional language related to the choice of colors and alignment of the graphic during production of the printed towel are drawn to the process of making the towel itself. These features should only be given patentable weight if they were to produce a printed towel which is structurally different than the prior art. And as set

Art Unit: 1794

forth above, the functional language is broad enough to include embodiments where the central area is printed without any of the print overlapping onto the border or bleeding through to the back of the towel. Hence, if the prior art teaches a woven towel with the claimed lighter and darker border and central regions, which the applicant has acknowledged is known in the art, and the prior art teaches a printed pattern is added only to the central region of the towel, then the prior art would read on the claimed invention even if the prior art requires special processing to prevent overlap with the border regions and bleed through onto the back of the towel. The different processing limitations would not create a final product that is structurally different from printed towel created in the present claim.

Further, it is noted that it has been held that as long as there is evidence of record establishing inherency, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art reference does not preclude a finding of anticipation. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999). Thus, the prior art is not required to teach that darker colors can mask print, if this feature is an inherent result of the structure itself. As long as the prior art teaches the desired structural feature which would inherently have the claimed function then the inherent function is considered to be present in the prior art, even if the function is not taught. The darker regions would inherently mask the graphic impression. The prior art only need to teach the claimed structural feature which produces the function, i.e., darker border regions, is present. Which the applicant has acknowledge is known in the art.

Also, the applicant's arguments with regard to the weight given the term "capable of" are not considered persuasive. The term is not considered a positive limitation as set forth in *In re Hutchinson*. And the applicants arguments relating to other terms that have been found to be given weight in describing functional language (Appeal Brief, page 9) are not relevant because these other terms are terms which positively recite structural features and are not similar to "capable of". The term "capable of" only requires that the prior art be able to perform a function and does not require that the function is actually

Art Unit: 1794

performed. Thus, the claimed towel structure and the prior art do not need to have the print overlap or bleed through. The claim only requires that the border is relatively darker than the central area and the graphic impression, such that is able to mask the graphic. As discussed in Stark the combination of weave designs, print designs, and colors is endless to create desired visual patterns.

The applicant argues that Stark teaches that print patterns which are printed out of registry using print colors that contrast the fabric colors have a highly attractive visual appearance (Appeal Brief, page 7). However, Stark never specifically defines which combinations of colors or fabric and print patterns are specifically considered visually attractive. And while Stark teaches that products produced by printing graphics out of registry with the woven pattern to have the potential to create highly attractive products, Stark does not state or teach that products printed in registry would not be attractive or that products having woven regions with print and without print would be undesired. Instead, Stark desires to create more combinations of patterns and colors to give manufacturers the ability to create various designs and end products. And Stark discloses that combining printed patterns and woven patterns in various combinations can be used to create various highly visually attractive products. However, which designs are considered attractive and desirable is driven by fashion and styles of the times which change. Thus, while Stark teaches a means to create numerous designs it is within the level of ordinary skill to choose from the various combinations of printed and weave patterns to create a final product which would be considered visual attractive by a consumer. Stark in general teaches combinations of single and multiple colors can be used to create woven and printed patterns that are combined together to create a visually attractive end product. Stark does not teach that the printed design must be printed on, and distinguishable in all regions of the patterned fabric. Nor, does Stark teach away from printing in registry or printing with colors that are masked by regions of the woven fabric. The printed region is inherently going to be somewhat hidden or masked in darker colored regions. And, as suggested by Stark these

Art Unit: 1794

numerous fabric and print color combinations can be chosen by one with ordinary skill in the art to create a desired design in the end product that is visually attractive.

Further, the applicant argues that the choice of colors can be used to allow for less precise printing, and thus the design has a mechanical function. However, the function is related to the processing of the fabric and does not significantly distinguish the final product from the products disclosed in the prior art since the final product does not have to have the printed pattern overlap onto the border regions or bleed through to the back of the towel. And while things like bleed through and printing overlapping onto adjacent regions may be undesirable from a visual aspect, how the finished looks, the combination of colors, and whether the printed pattern can or cannot be seen is irrelevant to the claimed structure, which is a woven towel having a central region and a border region and a printed pattern applied to the central region. The colors chosen to create the fabric design relate to the ornamentation and design of the fabric and do not distinguish over similarly printed woven fabrics. Design matters which relate purely to ornamentation only cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). The fact that a border region is chosen to be blue or red, as opposed to black does not structurally distinguish one printed, patterned towel from another printed, patterned towel. And since the broadest reasonable interpretation includes a product where there is no overlap or bleed through by the printed pattern then this feature does not need to be taught by the prior art.

Additionally, it is noted that while misalignment during printing and bleed through can possibly create a visually undesirable product, these printing errors are also not desired for other reasons. The more printed matter applied to a towel the more the print will interfere with the properties of the towel such as softness, hand, and absorbency. And the reasons why the prior art create a towel with darker borders, a lighter central region on one side and a printed design on the central region, without and overlap or bleed through, are not relevant since the prior art creates the same product as the claimed

Art Unit: 1794

invention. Even if it is made by a different process or the design is chosen for a different reason the end result, i.e., the printed product, has the same structure as the claimed invention. A different process does not distinguish a claimed product from the prior art unless it creates a manipulatively different structure. Again, there is no significant difference in the physical structure between a printed towel with a black border and a printed towel with border color other than black wherein the printed pattern is only applied onto the lighter color central region. Therefore, the claims do not recite a final product that is distinguishably different from what is known in the art.

In fact, the applicant's agrees that the claimed product can be achieved by happenstance in the prior art. However, it is more than just happenstance, that is taught in the prior art. The applicant acknowledges that the towel structure with darker borders and lighter central regions on one side are known. It is known in the art to choose a dark border which contrasts with the color of the central region and hence would also be able to mask images that are printed onto the central region. Further, the prior art teaches that it is known to print designs on towels to create various desired visual appearances and that the designs can be printed in or out of registry with the fabric design. Thus, it would be obvious to print onto just the central region. Further, it would be obvious to print onto the lighter central region color because the graphic image would show up better on a lighter color than a darker color. Thus, printing onto a fabric with a woven design having a border region and a central region, by applying a printed graphic onto the lighter color central region is the natural extension of what is known in the art, and can be done to create numerous visually pleasing designs. Thus, the invention is combining together known elements in to create various visually pleasing designs as is taught by the prior art. And since the claim is not requiring that the towel have the print bleed through or the overlap onto the border than the prior art does not need to teach this feature. Instead if the prior art teaches the woven fabric with the print applied to just the central region, then the prior art teaches the same final product as that claimed by the applicant. Further, the motivation of choosing darker or lighter colors does not significantly distinguish over the

Art Unit: 1794

prior art which already teaches using lighter central areas and darker borders in the woven fabric as acknowledged by the applicant. A new reason for using a known design or pattern does not make that design or pattern patentable since it is already known and disclosed in the prior art. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Therefore, the claimed product does not distinguish over the prior art since there is no significant difference between printed, pattern towels wherein one towel has a black border and the other towel has a different color border and the printed pattern is only place in the lighter colored central area. Thus, the rejection is maintained.

2. The applicant argues that the combination of references is not sufficient to teach that one would choose to shear and bloom the lighter colored central region side for placement of the graphic (Appeal Brief, page 11). However, Sherrill et al. teaches to bloom the side which is going to print to improve the printed product. Further, in Figure 1, Sherrill et al. shows that the print pattern is applied to a light colored region of the fabric. Thus, it would have been obvious to one having ordinary skill in the art to apply the printed pattern to the lighter colored central region of the woven fabric. Therefore, the prior art provides sufficient teaching to apply the print to the lighter central region. Thus, the rejection is maintained.

II. The applicant argues that since the two rejections are so similar that if the rejection which includes Terrasse is withdrawn then the other rejection should be overturned. The applicant has not provided separate arguments for the other rejection based on just Parker, Stark, and Sherrill. Therefore, the arguments set forth above are for both rejections. If the art rejection addressed above is upheld then the rejection based on Parker, Stark, and Sherrill should also be upheld.

Art Unit: 1794

III. With regards to the double patenting rejection over 09/747,529, the applicant has indicated a willingness to file a terminal disclaimer upon indication of allowable subject matter. Thus, the applicant is not traversing the double patenting rejection, and the rejection is maintained.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided in the Appeal Brief submitted on March 31, 2008.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jenna-Leigh Johnson/

Primary Examiner, Art Unit 1794

Jenna-Leigh Johnson

Conferees:

/Jennifer Michener/

Jennifer Michener

QAS, TC1700

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1794